

REMARKS

Claims 42-82 are pending in the application. Applicants respectfully submit that these claims are in condition for allowance.

Rejection Under 35 U.S.C. § 103(a)

Claims 42-45 and 48-82

The Examiner rejected claims 42-45 and 48-82 under 35 U.S.C. § 103(a) as being unpatentable over US Patent Application Publication No. 2003/0100998, filed by Brunner, et al. (hereafter “Brunner”). Without acquiescing that Brunner is in fact prior art and without waiving their right to establish an earlier date of invention, Applicants submit that the pending claims are patentable over Brunner.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. *See, In re Rijckaert*, 9 F.3d 1531, 1532,28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A *prima facie* case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. *See In re Lintner*, 458 F.2d 1013, 1016, 173 USPQ 560,562 (CCPA 1972).

Furthermore, the conclusion that the claimed subject matter is *prima facie* obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led the individual to combine the relevant teachings of the references to arrive at the claimed invention. *See In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on 35 U.S.C. § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that

the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. *See In re Warner*, 379 F.2d 101 1,101 7,154 USPQ 173,177 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968).

The Examiner stated that “it would have been obvious . . . to modify Brunner’s flexible subject system by implementing it using only one camera located at the top, as shown in Figures 15 and 16 . . .” Office Action, p. 3, ll. 13-17. In support of this conclusion the Examiner identifies three statements in Brunner.

In trying to prove that a one-top-view camera combination is taught by Brunner, the Examiner first points to paragraph [0242] asserting that “[i]n Paragraph [0242] [sic] it is stated that the addition of a second camera is an option and that it is provided to expand the angle of vision, and gain a measurement of depth.” *See*, Office Action at p. 3, ll. 7-9. However, in this embodiment of Brunner the camera is clearly located on a side wall of the cage. There is nothing disclosed in this embodiment to suggest that this camera provides top view images only, as recited in the claims 42, 57, 75.

Also, the system of Figures 1 and 2, described in Paragraph [0242], “comprises a plurality of detectors for detecting physical and biological responses.” *Brunner* at p. 16, ¶ [0241]. According to Brunner, even when the system of Figs. 1 and 2 is implemented in an optional one-camera configuration, such configuration will also include “a series of other devices” to capture non-visual signals from the monitored animals. *See Brunner* at p. 16, ¶ [0242]. In Brunner, the information collected from non-visual detectors is used in combination with video data, in contrast with the claimed invention, where only data from the top-view is used. Therefore, the system disclosed in Figs. 1 and 2 of Brunner does not teach or suggest a method comprising identifying a center of mass or a body part of the animal based on the images

taken from a top view, as recited in claims 42, 57 and 75. As a result, paragraph [0242] of Brunner does not “provide objective teaching . . . that would have led an individual. . . to arrive at the claimed invention.” *See, In re Fine* at 1074.

The Examiner also pointed to paragraph [0281] to support his position that side cameras are optional in an embodiment disclosed in Figs. 15 and 16 of Brunner. *See, Office Action* p. 3, ll. 11-13. The Examiner cites Brunner “[i]n certain optional embodiments, the top camera 1502 is also used to determine which of the side-view cameras 1605 to use to view the animal in profile,” to prove that side-cameras are optional for this system and, as a result, this embodiment of Brunner discloses a method of collecting video images from only the top view. The Applicants respectfully disagree.

After reading paragraph [0281], the Applicants conclude that the sentence, cited by the Examiner, emphasizes that as an optional function of the top camera in a three-camera system, the top camera may be used to “determine which of the side-view cameras” to use. This is clearly a functional description of how the three cameras may be used in this embodiment. Nowhere does Brunner teach or suggest using a top view camera to determine to use none of the side-view cameras thus collecting video images taken only from the top view as required by claims 42, 57, 75.

Additionally, the Examiner points to paragraph [0280] of Brunner to support his obviousness rejection, and specifically to the statement that “the subject system are designed to be flexible.” Read as a whole, this paragraph refers to the system’s flexibility “to accommodate variety of experimental apparatus,” by adjusting the animal habitat, such as walls, floors, etc. Nowhere does this paragraph teach or suggest the use of a one-camera system. The Applicants

respectfully disagree that this statement provides “factual basis” for an obviousness rejection of the above-identified claims 42, 57, 45.

Therefore, paragraphs [0242], [280] and [281] of Brunner do not “provide objective teaching . . . that would have led an individual. . . to arrive at the claimed invention,” and the Examiner did not establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a). For at least these reasons, claims 42-45 and 48-82 are patentable over Brunner.

Claims 46 and 47

Claims 46 and 47 were rejected under 35 U.S.C. §103(a) as unpatentable over Brunner in view of U.S. Patent No. 6,837,184 to Gondhalekar (hereafter “Gondhalekar”). Claims 46 and 47 depend on claim 42, and therefore are patentable for at least the same reasons as Claim 42.

Also, the Examiner stated that “programmable floor” of Gondhalekar renders “virtual zone” of the present invention obvious. The Applicants respectfully disagree.

Claims 46 and 47 require “determining the location . . . in relation to a user-defined virtual zone.” As explained in the specification, the virtual zones are not physical. They are created using computer graphic tools by the user. The “programmable floor” of Gondhalekar is an “electrically programmable floor capable of constructing various obstacles and passageways.” Gondhalekar, Abstract. In contrast to the “virtual zone” of the present invention, obstacles and passageways of Gondhalekar’s programmable floor are physical objects forming mazes for animal testing. While the apparatus shown in Gondhalekar may be “programmable” and may form “user-defined” sets of obstacles, these obstacles are real and do not form a “user defined **virtual** zone.” For at least these reasons, claims 46 and 47 are patentable over the cited art.

Conclusion

Based on the foregoing arguments, Applicants respectfully submit that all pending claims in the present application are in condition for allowance and respectfully request the issuance of a Notice of Allowance. If a telephone conference would facilitate the prosecution of this application, the Examiner is invited to contact Applicants' attorney at the number listed below.

Respectfully submitted,

Dated: _____

By: _____



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